CONTRA COSTA
CLEAN WATER
PROGRAM

Donald P. Freitas
Program Manager

April 3, 2009

Bruce H. Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Contra Costa Clean Water Program's Comments on the San Francisco Bay Regional Water Quality Control Board's February 11, 2009 Revised Tentative Order for the Municipal Regional Permit

Dear Mr. Wolfe:

This letter provides the Contra Costa Clean Water Program's (hereinafter referred to as the Program) written comments on the San Francisco Bay Regional Water Quality Control Board (Water Board) staff's February 11, 2009 Revised Tentative Order for the Municipal Regional Permit (MRP). These comments are submitted on behalf of the 21 public agencies comprising the Program, which consists of the nineteen (19) incorporated cities/towns, unincorporated Contra Costa County, and the Contra Costa County Flood Control and Water Conservation District[1]. This letter also incorporates by reference the Bay Area Stormwater Management Agencies Association's (BASMAA's) comment letter (i.e., "Municipal Regional Stormwater NPDES Permit–Revised Tentative Order (February 11, 2009")) submitted and dated March 31, 2009.

Program General Comments

The following general comments are in addition to the Program's "Specific Comments" (see attached), which provide further details and explanations for some of the general comments below:

1. **Limited Opportunity for Public Review - February 11, 2009 Revised Tentative Order for the MRP**

[1] Contra Costa permittees may be submitting separate comment letters as well. All of these and any other comments submitted by other Bay Area municipal stormwater programs, and/or their permittees and the BASMAA, are incorporated herein by reference. The Program also supports and incorporates by reference, the legal comments being submitted by Bob Falk on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program, and Gary Grimm on behalf of the Alameda Countywide Clean Water Program.

It has taken nearly five (5) years for development of the February 11, 2009 Revised Tentative Order for the MRP. The last milestone in this process was the release of the December 14, 2007 Draft Tentative Order for the MRP. The deadline for written comments on the December 2007 draft MRP was February 29, 2008, and the public

hearing was held on March 11, 2008. The Program submitted extensive and lengthy written comments and oral testimony on the December 2007 draft MRP in February and March 2008. Twelve months later, the Program has still not received formal responses to our February 29, 2008 written comments and March 11, 2008 oral public testimony. The February 11, 2009 *"Revised MRP Transmittal"* letter states:

"*We have included a summary of the major changes made in response to comment, and we also plan to distribute by the first week in March more comprehensive responses to comments received on the December 14, 2007 Tentative Order.*"

On March 18, 2009 (third week in March), Water Board staff released "*General Comments and Responses – MRP November 2007 Tentative Order.*" With this submittal, Water Board staff indicated:

"*This Summary of Responses to Comments is provided in advance of the comprehensive responses to comments that will accompany the Tentative Order that the Water Board will consider at its adoption hearing.*"

The February 11, 2009 Revised Tentative Order MRP contains many significant revisions and new provisions. The short public review period, and the confusing, fragmented and incomplete response to comments has made municipal review of the revised MRP a very hurried and difficult process. First, we assume the reference to a "*November 2007 Tentative Order*" above is an error (i.e., should be "December 2007 Tentative Order".) Second, without the benefit of formal comprehensive responses to our comments submitted over twelve (12) months ago, municipalities have not been able to fully evaluate why certain previous comments were not addressed or why other additions and revisions are being proposed. This is unacceptable. Water Board staff's March 18, 2009 release of "General Comments and Responses," less than 3 weeks before the April 3, 2009 written comment deadline, did provide some insight into Water Board staff's proposed changes; however, these comments are "general" and incomplete. Many of the responses completely fail to respond to the specific comments. Municipalities have had less than 60 days (i.e., 51 days) to review over 650 pages (see below) of revised and/or new complex and highly technical permit provisions.

• Revised Fact Sheet:	
• Revised Tentative Order:	191 pages
• Comparison "redline/strikeout" Document:	250 pages
• Summary of Proposed MRP Major Revisions	5 pages
• General Comments and Responses (released 3/18/09)	112 pages
	654 Total

While the Program appreciates Water Board staff's work in developing a document of this magnitude, the Program and local agencies (i.e., regulated community) must be provided a sufficient and reasonable period of time for its review. This being said, the Program also wants the MRP adoption process to move forward as rapidly as possible so that we may refocus our efforts and resources on implementing our stormwater quality protection programs. To balance both of these objectives, the Program requests it be provided a minimum of 30 days, prior to the adoption hearing, for review of the final draft Tentative Order for the MRP and for review of the anticipated formal and complete response to comments.

2. Funding Stormwater Programs

Following promulgation of the Federal Stormwater Final Rule on November 16 1990 mandating requirements for large and medium municipalities to obtain and implement municipal National Pollutant Discharge Elimination System (NPDES) permits and programs, the Program established in 1993 a Stormwater Utility Assessment to pay all associated costs. This assessment has provided a dedicated source of revenue for implementation of our NPDES permits and stormwater quality protection programs over the past 15 years. Since the issuance of our first municipal NPDES permit, the permit requirements and scope of our stormwater quality protection programs have increased dramatically. The Program presently spends approximately **$16 million per year** to implement its current NPDES Permit. However, at this level of funding, all our co-permittees now find themselves at their maximum allowable assessment rates. The revised MRP, as proposed, will most likely double our compliance costs over the next five years. The only way to increase our assessment rates to generate additional funds to comply with the proposed MRP requirements is to ask voters to approve higher assessments.

Proposition 218, approved in 1996, requires a 2/3 majority of voters for new or increased fees and assessments. This is a significant hurdle in the best of times, and nearly an impossible task in our current fiscal crisis. Since this method is not likely to succeed in the near-term (i.e., next 3-5 years), municipalities only other readily available revenue source is their General Fund. The General Fund finances most municipal services. Public Safety takes the lion's share of these funds. Certainly, everyone is aware of the impact our national recession and our state's fiscal crisis has had on local governments. As is always the case, but now more than ever, local governments and the local officials elected to serve their communities must make difficult choices on how to allocate and spread severely limited tax dollars among critical basic public services, including public safety (i.e., police and fire), libraries, parks and recreation, and maintenance and protection of our public infrastructure and natural resources. Cities, towns, and counties have had to make, and are continuing to make, painful cuts in personnel and public services with devastating impacts to the most vulnerable members of our communities.

The challenge facing us is how to focus our limited financial resources to maximize benefits to our citizens and the environment. BASMAA and the Program's comments herein identify a number of proposals that will make the MRP more affordable and implementable over the next five to ten years and still achieve our water quality objectives.

3. Water Quality Monitoring & Pollutants of Concern (POC)

The proposed water quality monitoring and POC requirements in the revised MRP represent the single most significant increase in requirements and the Program's compliance costs. As currently proposed, the MRP water quality monitoring and pollutants of concern requirements are estimated to increase the Program's monitoring costs nearly 300% over the next five years (from approximately $2 million to almost $6 million). Simply put, we will not be able to afford the required monitoring, special studies, and pilot projects with our current fiscal resources.

The Program and BASMAA have reviewed these proposed monitoring requirements carefully. We believe some of the monitoring requirements are still: 1) not based on sound science; 2) too prescriptive to allow for adaptive monitoring; 3) not necessary; and, 4) not prioritized to focus on the most pressing water quality issues. For example, the requirement to conduct long term trend monitoring is confusing and appears to be an amalgamation of disparate monitoring requirements that have significant overlap with the other monitoring provisions. The Program and BASMAA have identified a number of specific changes to limit the expansion of the proposed monitoring requirements to more affordable levels and to link them to relevant management questions. The Program and BASMAA are committed to working with Water Board staff to discuss our specific improvements to the water quality monitoring and POC sections.

4. Trash Reduction – Pilot Scale Deployment of Full Capture Trash Devices

Water Board staff made significant changes to Provision C.10 - "*Trash Reduction.*" However, Water Board staff is still proposing a Bay Area-wide "pilot-scale deployment" of full trash capture devices. The capital cost for "pilot-scale" deployment/installation of these devices in Contra Costa County alone is estimated to range from $1.5 to 33 million dollars. This range reflects two different technological approaches. The less expensive approach involves retrofitting existing storm drain inlets with screens designed to capture any particle 5 mm in size or larger. While this approach has a lower capital cost, the operation and maintenance costs are estimated to be $1.5 million annually. The other more expensive approach, in terms of capital costs, involves installation of much larger structural facilities[2] strategically deployed to treat larger catchment areas. The Countywide operation and maintenance cost for these larger structural devices is estimated to be $650,000

[2] An example of the larger type device is one used by Caltrans in Los Angeles called a Gross Solids Removal Device (GSRD).

annually – significantly less than the inlet screens. However, due to the significant capital costs for deployment of the larger structural devices, local governments, in order to comply with the "pilot-scale" deployment requirements, will overwhelmingly elect to install the least expensive screens. This will have two unintended consequences. First, selection of the least expensive screens will require a significantly greater long-term public investment in operation and maintenance costs. Second, the selection of the least expensive technology, while meeting the permit requirements, will not result in achievement of Water Board staff's well intended goal for the pilot-scale deployment, which is to:

"*.....enable Permittees to learn the best devices and most efficient placement of these trash capture technologies for our Region.*"

Unfortunately, by law (Assembly Bill No. 2768) the Program's dedicated Stormwater Utility Assessment revenues cannot be used for debt financing. Therefore, the least expensive option will necessarily be employed in order to meet the "pilot scale" full trash capture requirements. To avoid these unintended consequences, the Program requests a more focused and affordable pilot-scale deployment approach, which <u>will</u> help us learn: 1) what types of devices work best in different applications and settings; 2) the maintenance costs and requirements of the various devices; and, 3) the various devices' durability and parts availability.

5. Trash Reduction – Trash Hot Spots

Water Board staff's proposed requirements for selecting, cleaning and assessing "trash hot spots" has been improved, but still needs further refinements to make these requirements more feasible and effective, such as:

- Revising the proposed Trash Action Level (TAL) to be consistent with the concept of action levels developed by the State Water Resources Control Board's Blue Ribbon Panel.
- Revising the proposed Trash Action Level (TAL) to be 100 pieces of trash or less per 100 feet of creek/shoreline, instead of the Santa Clara URTA "urban optimal" category.
- Allowing credit for <u>all</u> previously installed full trash capture devices meeting the permit requirements.
- Modifying the trash hot spot assessment requirements in order to reduce overall compliance costs while still providing meaningful trash monitoring information.
- Providing municipalities the flexibility and option to present justification for redirecting trash hot spot reduction measures and resources to another trash hot spot(s), where greater benefit or trash load reduction could be achieved.

Attached are the Program's specific comments, which provide further explanation for each of these requested refinements.

6. Conditionally Exempted Discharges

The Contra Costa Clean Water Program's February 29, 2008 written comments on the December 14, 2007 Draft Tentative Order for the MRP included extensive comments on the conditionally exempted discharges contained in provision C.15.b. In those comments, the Program included a request for a meeting with Water Board staff and other stakeholders to review and discuss a proper regulatory framework for addressing many of the listed conditionally exempted discharges. Water Board staff's "Comments and Responses Summary" released on March 18, 2009 specifically acknowledges this request. Water Board staff's "Response" and "Proposed MRP Revision" to this request is provided below:

"*Water Board staff met with water utilities in February 2008 during the period for public comment. Substantial changes have been incorporated into the T.O. as a result of the February 2008 meeting.*"

Water Board staff's "response" and proposed revision completely ignores the Program's request for a meeting, and also ignores the direction of their Board members at the conclusion of the March 11, 2008 public hearing. At that hearing, Water Board members directed staff to "work with the cities," "consult with municipalities," "come up with a more balanced approach," etc... Water Board staff has neither consulted with nor sought input from municipalities on any aspect of Provision C.15 since the closing of the February/March 2008 public comment period. The February 11, 2009 Revised Tentative Order is the first time municipalities have had a chance to review and provide input on this section of the proposed permit.

The Contra Costa Clean Water Program again requests an opportunity to meet with Water Board staff and other stakeholders to discuss a proper regulatory framework for addressing many of the conditionally exempted discharge types outlined in Provision C.15.b. Of particular concern is C.15.b.iii. This section, as currently drafted, would require Permittees to regulate and oversee discharges from water supply special districts and fire districts. These provisions are unacceptable. Permittees do not have the authority to regulate special districts. The Water Board, however, does have the authority and the responsibility to regulate these discharges.

7. Contra Costa's LID Approach

The revisions made to the proposed Provision C.3 since the December 14, 2007 Tentative Order are extensive. New requirements have been added. This is the first opportunity provided for the Permittees and the public to comment on these extensive revisions and proposed new requirements.

The new language—taken together with language that was commented on previously but has not been revised—could require the Program to radically alter or

even abandon its successful Low Impact Development (LID) approach to controlling stormwater from new developments and redevelopments. Instead of Low Impact Development, proponents of development and redevelopment projects would use conventional designs and methods, which are more costly and less effective than LID in preventing stormwater pollution and managing hydrograph modification.

Since the December 14, 2007 Tentative Order was issued, Contra Costa's *Stormwater C.3 Guidebook* has been emulated in the San Diego Region and elsewhere throughout California. The *Guidebook's* LID approach is widely regarded as innovative and state-of-the-art.

Water Board staff continues to assure us it is not their intent to discourage the use and ongoing development of this approach here in the Bay Area. Accordingly, in our attached comments, we have identified minimum modifications required to allow us to continue to implement and develop the Contra Costa LID approach.

8. Alternative Compliance to the New Development & Redevelopment Stormwater Treatment Requirements

Water Board staff is proposing to eliminate the previously approved option allowing "regulated projects" to meet the stormwater treatment requirements by providing either "Equivalent Offsite Treatment" or "Contributing Equivalent Funds to a Regional Project." Although this language has been in our existing permit since February 2003, it has rarely ever been employed. Contra Costa permittees believe there is no compelling reason to limit alternative compliance to only certain "infill" and "redevelopment projects." The option of "Equivalent Offsite Treatment" and "Contributing Equivalent Funds to a Regional Project" should be made available to all project proponents.

If these options are not made available to all project proponents, then we request that an additional category be added to allow, at a minimum, public roadway improvement projects to make use of alternative compliance. Implementation of Provision C.3 on road widening and traffic and safety projects is frequently impracticable. The problem of impracticability can best be addressed by incorporating road projects in the list of projects eligible for alternative compliance, as described in Provision C.3.e.

9. Green Street Pilot Projects

Water Board staff's <u>new</u> requirement for "*permittees to cumulatively complete 10 pilot green streets projects that incorporate LID techniques for site design and treatment in accordance with Provision C.3.c. and that provide stormwater treatment sized in accordance with Provision C.3.d.*" is well intended but as written will be extremely difficult, if not impossible, to meet. The permittees are currently implementing a variety of "green streets" projects that include the "key elements"

described in this new proposed provision. Additional projects are being considered. However, because space within right-of-ways in densely urban areas is limited, and because drainage areas tributary to treatment facilities comprise both new and existing areas, it is often not possible to meet the numeric sizing criteria in Provision C.3.d. It would better suit the purposes of Provision C.3.b.iii. to remove this restriction so that the benefits of facilities built according to a "maximum extent practicable" criterion can be determined and compared, and the lessons learned from that experience can be applied to future "green streets" projects.

Should you have any questions or would like to meet to discuss these general or specific comments, please contact me at (925) 313-2373 dfrei@pw.cccounty.us or Tom Dalziel of my staff at (925) 313-2392 tdalz@pw.cccounty.us.

I appreciate your consideration of the aforementioned comments.

Sincerely,

Donald P. Freitas
Program Manager
Contra Costa Clean Water Program

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Attachment

CONTRA COSTA CLEANWATER PROGRAM'S
SPECIFIC COMMENTS ON THE FEBRUARY 11, 2009
REVISED TENTATIVE ORDER FOR THE MUNICIPAL REGIONAL PERMIT

C.2. Municipal Operations

1. Section C.2.e.i. – Omit "*and post*" from the second sentence so it reads:

"*Permittees shall implement and require contractor to implement BMPs for erosion and sedimentation control measures during ~~and post-~~construction for maintenance activities on rural roads, particularly in or adjacent to stream channels or wetlands*".

Rationale for Omission: This provision should be consistent with C.2.e.ii.(1), which states Permittees shall "*implement BMPs for erosion and sediment control measures during construction, and maintenance activities……*".

2. Section C.2.e.ii.(1) – Delete second sentence referring to implementation of the C.3 requirements.

Rationale for Deletion: Including C.3 provisions in section C.2 is unnecessary, duplicative, and may cause confusion to permittees reading multiple notations of the same permit requirements.

3. Section C.2.e.ii.(2)(e) – Delete "……*re-grade roads to slope outward where consistent with road engineering safety standards*…." from this section as follows:

"*(e) Maintenance of rural roads adjacent to streams and riparian habitat to reduce erosion, replace damaging shotgun culverts, ~~re-grade roads to slope outward where consistent with road engineering safety standards, and install water bars~~; and*"

Rationale for Change: Re-grading roads to slope outward on an inside curve is in direct conflict with the American Association of State Highway and Transportation Officials (ASSHTO) and Caltrans standard practice of grading roads to slope inward for vehicle safety on curves. There is no road engineering safety standards that would allow roads to be sloped outward so this wording should be deleted.

Furthermore, "water bars" are a feature for unpaved roads and are not appropriate for paved roads. On paved roads, they would be an inappropriate speed bump. Sawing transverse grooves in the pavement will have the effect of shortening the life of pavement and can only be used where the design thickness of the pavement has

considered the structural reduction of pavement thickness due to the grooves.

4. Section C.2.f.i.(1) – Insert "*California Stormwater Quality Association's California BMP Handbook for Municipal Activities and/or*" to:

"*Each SWPPP shall incorporate all applicable BMPs that are described in the California Stormwater Quality Association's California BMP Handbook for Municipal Activities and/or the Caltrans Storm Water Quality Handbook Maintenance Staff Guide, May 2003, and its addenda.*"

Rationale for Insertion: The California BMP Handbooks are a well recognized and readily available resource, and reflect the current state of water quality best management practices for all typical activities conducted at municipal corporation yards.

C.3. New Development and Redevelopment

The revisions made to the proposed Provision C.3 since the December 14, 2007 Tentative Order are extensive. New requirements have been added. This is the first opportunity provided for the Dischargers and the public to comment on these extensive revisions and proposed new requirements.

The new language—taken together with language that was commented on previously but has not been revised—could require the Program to radically alter or even abandon its successful Low Impact Development (LID) approach to controlling stormwater from new developments and redevelopments. Instead of Low Impact Development, proponents of development and redevelopment projects would be directed to use conventional designs and methods, which are more costly and less effective than LID in preventing stormwater pollution and managing hydrograph modification.

Since the December 14, 2007 Tentative Order was issued, Contra Costa's *Stormwater C.3 Guidebook* has been emulated in the San Diego Region and elsewhere throughout California. The *Guidebook's* LID approach is widely regarded as innovative and state-of-the-art.

Region 2 staff continues to assure us it is not their intent to discourage the use and ongoing development of this approach here in the Bay Area. Accordingly, we have identified minimum modifications required to allow us to continue to implement and develop the Program's LID approach.

Background

Low Impact Development (LID) is a stormwater management strategy aimed at maintaining or restoring the natural hydrologic functions of a site to achieve natural resource protection objectives and fulfill environmental regulatory requirements; LID employs a variety of natural and built features that reduce the rate of runoff, filter pollutants out of runoff, and facilitate the infiltration of water into the ground. LID design detains, treats and infiltrates runoff by minimizing impervious area, using pervious pavements and green roofs, dispersing runoff to landscaped areas, and routing runoff to rain gardens, cisterns, swales, and other small-scale facilities distributed throughout a site (Resolution of the California Ocean Protection Council, May 15, 2008).

In LID design, a development site is divided into small catchments. Runoff from each catchment is managed by dispersal and infiltration to landscaping, where possible. Where dispersal and infiltration is not possible, runoff is routed to small-scale engineered facilities such as bioretention areas, bioswales, planter boxes, or infiltration devices.

In February 2003, Regional Board Order R2-2003-0022 amended our NPDES permit to add the new Provision C.3 requirements for new developments and redevelopments. The Provision C.3 criteria for stormwater treatment are oriented toward conventional (non-LID) design for treatment controls. In particular, the criteria assume a single treatment facility for an entire development. However, the Program developed LID guidance for site design and distributed treatment controls and demonstrated the LID guidance complies with Provision C.3. The LID guidance is presented in the Program's *Stormwater C.3 Guidebook*.

As required by Order R2-2003-0022, the Program submitted its Hydrograph Modification Management Plan (HMP) in May 2005. To achieve the standard in Order R2-2003-0022, the Program's HMP used an LID approach, including modified designs and sizing factors for bioretention facilities, planter boxes, and other facilities. Again, the Program created guidance so that developers could use LID to comply with Regional Board's permit requirements, even though those requirements are oriented toward a non-LID design approach.

Unlike the HMPs for other Bay Area counties, Contra Costa's HMP promoted a presumptive approach to HMP compliance. The Program's *Stormwater C.3 Guidebook* encourages LID implementation as the easiest and fastest route to project approval. Applicants have the option of submitting documentation, at their own risk and expense, to demonstrate HMP requirements should not apply. This contrasts with the HMPs from other counties, which include extensive maps and other provisions exempting projects within large geographic

areas of their counties from even needing to consider HMP compliance.

Water Board Order R2-2006-0050 approved Contra Costa's HMP with minor modifications in July 2006. Contra Costa permittees began implementing the HMP in October 2006.

The Program continues to revise and update the LID approach to make it more effective and easier to implement. A Fourth Edition of the *Stormwater C.3 Guidebook,* published in September 2008, includes a new LID Design Guide with detailed procedures for documenting how a project uses LID to comply with NPDES permit requirements. Recent guidance on soils, plantings, and irrigation for bioretention areas is in an appendix published in January 2009. Designs for new, improved LID facilities have been developed and will be released shortly. A specialized computer application, the Integrated Management Practice Sizing Calculator, has been updated. The new version is being tested by municipal staff will soon be made available to Contra Costa's development community.

Changes to Provision C.3.g. that are required to allow continued implementation of Contra Costa's LID approach are as follows:

Section C.3.g.ii.(1). Range of Flows to Control: Change this provision as shown in the following redline/strikeout:

For Alameda, Contra Costa, San Mateo, and Santa Clara Permittees, HM controls shall be designed such that post-project stormwater discharge rates and durations match pre-project discharge rates and durations from 10% of the pre-project 2-year peak flow up to the pre-project 10-year peak flow. Contra Costa Permittees, when using the ~~two pre-sized and pre-designed Integrated Management Practices (IMPs), the "Flow-Through Planter" and the "Swale"~~ design procedure, criteria, and sizing factors specified in the Contra Costa Clean Water Program's *Stormwater C.3 Guidebook* per Attachment C of his Order, are not required to meet the low-flow criterion of 10% of the 2-year peak flow. ~~These two IMPs are designed to control to the specified low flows.~~ After the Contra Costa Permittees conduct the required monitoring, the ~~design of these IMPs~~ procedure, criteria, and sizing factors will be reviewed.

Reason for Change: Although the existing language in the Revised Tentative Order seems intended to allow Contra Costa's LID approach to continue, the language is so specific as to be already outdated and so restrictive as to prevent ongoing development of improvements to Contra Costa's LID designs.

Contrary to this paragraph, the "Flow-Through Planter" and the "Swale" are *not* referenced in Attachment C of the Tentative Order. Further, the "Swale" design has been omitted from the current *Guidebook* in favor of more efficient and advanced designs.

Attachment C—which is the standard the Board adopted in Order R2-2006-0050—refers to the "design procedure, criteria, and sizing factors specified in the Contra Costa Clean Water Program's *Stormwater C.3 Guidebook.*" In adopting this language in 2006, the Board wisely provided for further development of the new LID approach in subsequent editions of the *Guidebook.*

The 2006 Order followed over a year of technical discussions with Water Board staff and reflected an understanding that:

(a) the assumptions used in establishing design criteria for Contra Costa's bioretention areas, planters, and other LID facilities are conservative;

(b) the anticipated distribution and mix of types of LID facilities within sites and within watersheds makes stringent application of low-flow criteria to any one facility less important;

(c) Contra Costa's presumptive approach means more facilities throughout its watersheds will implement hydrograph modification management controls;

(d) unlike the other counties' HMPs, Contra Costa's HMP does not have maps showing exempt areas;

(e) a distributed approach provides an additional buffer against impacts to streams; and

(f) assumptions used to calculate pre-project runoff and facility performance have not been verified by empirical evidence and Contra Costa's HMP includes provisions for monitoring to verify facility performance and for changes to facility designs if warranted.

Unless this new language is changed, the revised Tentative Order would reverse the Board's 2006 decision and apply new criteria to the design of Contra Costa's LID facilities. No technical rationale has been provided for this reversal, nor has any schedule been proposed for complying with the change.

Section C.3.g.ii.(4). Calculating Post-Project Runoff: Delete the second sentence of this paragraph, which states: "*Retention and detention units shall be considered impervious surfaces for the purposes of calculating post-project runoff. Pre- and post-project runoff shall be calculated and compared for the entire site, without separating or excluding areas that may be considered self-retaining.*"

Reason for Change: The basis of LID is to disperse runoff to landscaped areas where

possible and to use small-scale bioretention or other LID facilities distributed throughout the site. The clause eliminating credit for self-retaining areas would disallow the practice of directing downspouts to concave-graded landscaped areas as a means of control. The clause requiring comparison for the entire site would disallow use distributed LID facilities and would disallow Contra Costa's simplified approach with sizing factors.

Comments on Other New Provisions in the Revised Tentative Order

Provision C.3.b. Regulated Projects

Section C.3.b.ii.(1) Regulated Projects. Special Land Use Categories. Effective Date. Change the sentences addressing effective date as shown in the following redline/strikeout:

Beginning July 1, 2011, all references to 10,000 square feet in Provision C.3.b.i.(1) change to 5,000 square feet. ~~*For development projects in this category that have received final, major, staff-level discretionary review and approval for adherence to applicable local, state, and federal codes and regulations, before July 1, 2011, the lower 5000 square feet impervious surface threshold (for classification as a Regulated Project) shall not apply. Final, major, staff-level discretionary review and approvals are decisions by a public agency's or governmental body's staff that require the exercise of judgment or deliberation to approve or disapprove a particular development project, as distinguished from a determination that a development project has a complete application.*~~ *The lower impervious surface threshold shall not apply to any development project for which a privately sponsored development application has been deemed complete (pursuant to Government Code §65943) by a Permittee prior to January 1, 2011. For public projects for which funding has been committed and construction is scheduled to begin by July 1, 2012, the lower 5000 square feet of impervious surface threshold (for classification as a Regulated Project) shall not apply.*

Delete footnote 2 regarding "Final, major, staff-level discretionary review and approval," and make similar changes to Provision C.3.c.ii. and the sample reporting table C.3.b. footnotes.

Reason for Changes: The proposed phrase "final, major, staff-level discretionary review and approval" is ambiguous and has no distinct meaning in the context of California planning and zoning law or in the context of municipalities' established development

review procedures. In contrast, "deemed complete" is tied to specific requirements of the Permit Streamlining Act. Because the "deemed complete" date is close to the beginning of the development review process, the use of this milestone avoids the circumstance where a project with an exceptionally long review period could be made subject to C.3 while in mid-review.

The "deemed complete" milestone was used successfully to define the start date for the C.3 Provisions in Contra Costa's current municipal stormwater NPDES permit. Prior to the February 15, 2005 start date, every Contra Costa municipality adopted an ordinance stating in part: "Every application for a development project, including but not limited to a rezoning, tentative map, parcel map, conditional use permit, variance, site development permit, design review, or building permit that is subject to the development runoff requirements in the [municipality's] NPDES permit shall be accompanied by a stormwater control plan that meets the criteria in the most recent version of the Contra Costa Clean Water Program Stormwater C.3 Guidebook." This effectively requires that the applicant demonstrate the project will comply with C.3 requirements prior to the application being deemed complete.

In the Fact Sheet accompanying the Revise Tentative Order, Board staff states their belief that "in many cases, the development permit applications have indeed not been reviewed for compliance with C.3 requirements and yet have automatically been deemed complete 30 days after the application submittal date." Board staff's concern is understandable; however, that some Bay Area municipalities did not—in some cases—follow the standard in their existing permits is weak justification for creating a different standard in the new permit (and a more ambiguous standard at that).

The Program acknowledges that the "deemed complete" milestone is earlier in the development review process than the ambiguous "final, major, staff-level discretionary approval" milestone. For that reason, we propose that if the "deemed complete" milestone is used, the start date be moved six months earlier, to January 1, 2010 instead of July 1, 2010.

Section C.3.b.ii.(4). New Road Projects. Implementation of Provision C.3 on road widening and traffic and safety projects is frequently impracticable. The problem of impracticability can best be addressed by incorporating road projects in the list of projects eligible for alternative compliance, as described in Provision C.3.e. We have addressed these concerns in our comments on that section.

Section C.3.b.iii. Green Streets Pilot Projects. Change the opening paragraph of this section as shown in the following redline/strikeout:

"Permittees shall cumulatively complete 10 pilot green streets projects that incorporate LID techniques for site design and treatment in accordance with Provision C.3.c. and that provide stormwater treatment ~~sized in accordance with Provision C.3.d.~~"

Reason for Change: The permittees are currently implementing a variety of "green streets" projects that include the "key elements" described in this provision. Additional projects are being considered. However, because space within right-of-ways in densely urban areas is limited, and because drainage areas tributary to treatment facilities comprise both new and existing areas, it is often not possible to meet the numeric sizing criteria in Provision C.3.d. It would better suit the purposes of Provision C.3.b.iii. to remove this restriction so that the benefits of facilities built according to a "maximum extent practicable" criterion can be determined and compared, and the lessons learned from that experience can be applied to future "green streets" projects .

Provision C.3.c. Low Impact Development (LID)

Section C.3.c.i.(1). Source Control Requirements. Change the initial sentence as shown in the following redline/strikeout:

Require all Regulated Projects to implement source control measures that at a minimum, shall include the following as appropriate to the sources included in the project:

Reason for Change: Source control requirements should apply only when the corresponding potential sources are to be constructed as part of the project.

Section C.3.c.i.(2). Site Design and Stormwater Treatment Requirements.

Change the initial sentence as shown in the following redline/strikeout:

"Require each Regulated Project to implement the following design elements, as appropriate to the project:

(a) Conserve natural areas~~, to the extent feasible~~, including existing trees, other vegetation, and soils;

(b) Minimize impervious surface;

(c) Minimize disturbances to natural drainages;"

Reason for Change: Implementation of each of these design elements is contingent on the characteristics of the site and the project.

Section C.3.c.i.(2)(g). Change this section as shown in the following redline/strikeout:

"Treat as much of the remaining runoff (after completion of Provisions C.3.c.(2)(d)-(f) as practicable with conventional systems (e.g., extended detention basins designed according to the criteria in Provision C.3.d or sand filters designed in accordance with the criteria in the current edition of the California Stormwater BMP Handbooks)."

Reason for Change: The permit should make explicit that sand filters are suitable conventional treatment systems, while also providing suitable design criteria—criteria which are lacking in Provision C.3.d.

Section C.3.c.i.(2)(h), C.3.c.i.(4), (5), and (6). Use of Vault-Based Treatment Systems.

Delete C.3.c.(2)(h), C.3.c.i.(4), (5) and (6).

Add a new C.3.c.(4) as follows:

"The following special situations sometimes present special challenges:

(a) Portions of sites which are not being developed or redeveloped, but which must be retrofit to meet treatment requirements in accordance with the "50% rule."

(b) Sites smaller than one acre approved for lot-line to lot-line development or redevelopment as part of a municipality's stated objective to preserve or enhance a pedestrian-oriented "smart-growth" type of urban design.

(c) Addition or replacement of roadway or other impervious surface within an existing right-of-way.

In these special situations, vault-based treatment systems that are designed to reliably remove particle-bound and soluble pollutants may be used to treat remaining runoff after Provisions C.3.c.(2)(d)–(g) have been implemented."

Reason for Change: The proposed notification requirements in Provision C.3.c.(4), (5), and (6) would create administrative burdens for both municipal staff and Regional Water Board staff. Municipal development review staff, in general, find it more effective and more worthwhile to implement clear-cut guidelines rather than having to prepare

additional analyses, submittals, correspondence, and reports. For the past few years, development review staff in Contra Costa municipalities have examined the types of development sites and development projects where it is not feasible to fully implement the Program's LID approach. The first two categories above are identified in the *Stormwater C.3 Guidebook;* the third category applies to public projects. The three categories are also consistent with a similar approach in the San Diego Countywide Model SUSMP, which was recently approved by the Executive Officer for the San Diego Region.

Provision C.3.d. Numeric Criteria for Stormwater Treatment Systems

Section C.3.d.iv.(2)(a). Limitations on Use of Infiltration Devices in Stormwater Treatment Systems

Change this provision as shown in the following redline/strikeout:

(a) "Appropriate pollution prevention and source control measures are implemented to protect groundwater at the project site~~, including the inclusion of a minimum of two~~ feet of suitable soil to achieve a maximum 5 inches/hour infiltration rate for ~~the infiltration system.~~"

Reason for Change: It is not feasible to engineer a soil mix to reliably limit infiltration to a maximum of 5 inches/hour while also guaranteeing infiltration will occur at a rate sufficient for stormwater treatment and flow-control. In fact, a soil meeting the specification as written in the Revised Tentative Order would almost certainly cause the infiltration device to fail.

Provision C.3.e. Alternative Compliance with Provisions C.3.b.

Contra Costa Co-permittees believe there is no compelling reason to limit alternative compliance to infill and redevelopment. The options of "Equivalent Offsite Treatment" and "Contributing Equivalent Funds to a Regional Project" should be made available to all project proponents.

If these options are not made available to all project proponents, then we request that an additional category be added to allow public roadway improvement projects to make use of alternative compliance, as follows:

Section C.3.e.i. Task Description. Make an addition to this provision as shown in the following redline/strikeout:

"Each Permittee may allow any Regulated Project that is ~~either~~:

- *An infill site development project (hereinafter called a Regulated Infill Project) or*
- *A redevelopment project (hereinafter called a Regulated Redevelopment Project) or*
- *Addition or replacement of roadway or other impervious surface within an existing right of way (hereinafter called a Road Improvement Project)*

to provide alternative compliance with Provisions C.3.b. and C.3.d.,...."

Additional Requested Changes to Provision C.3.e.

Section C.3.e.i.(1). Change this provision as shown in the following redline/strikeout:

(1) *"Exemption from Installing Hydraulically Sized Stormwater Treatment Systems: The Regulated Infill or Redevelopment Projects that may provide alternative compliance with Provision C.3.d. by Maximizing Site Design Treatment Controls[1] to provide as much onsite stormwater treatment as possible are listed below:*

(a) Projects that meet USEPA's Brownfield Sites definition found in Public Law 107-118 (H.R. 2869) – "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002, and that receive subsidy or similar benefits under a program designed to redevelop such sites;

(b) Low-income housing as defined under Government Code section ~~65589.5(h)(3)~~, 33413(b)(2)(i), but limited to the actual low-income portion or low- income impervious area percentage of the project;

(c) Senior citizen housing development, as defined under California Civil Code section 51.11(b)(4); or

(d) Transit-Oriented Development projects. A Transit-Oriented Development is any

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[1] **Maximizing Site Design Treatment Controls** is defined as including a minimum of one of the following specific site design and/or treatment measures:

- Direct roof runoff into cisterns or rain barrels for reuse.
- Direct roof runoff to vegetated areas.
- Direct runoff from sidewalks, walkways, and/or patios into vegetated areas.
- Direct runoff from driveways and/or uncovered parking lots into vegetated areas.
- Construct sidewalks, walkways, and/or patios with permeable surfaces.
- Construct bicycle lanes, driveways, and/or uncovered parking lots with permeable surfaces.
- Install landscaped-based stormwater treatment measures (non-hydraulically-sized) such as swales, tree wells or bioretention gardens.

development project that will be located within ½ mile of a transit station and will meet one of the criteria listed below. A transit station is defined as a rail or light-rail station, ferry terminal, bus hub, or bus transfer station. A bus hub or bus transfer station is required to have an intersection of three or more bus routes ~~that are in service 16 hours a day, with a minimum route frequency of 15 minutes during the peak hours of 7 am to 10 am (inclusive) and 3 pm to 7 pm (inclusive).~~

- *A housing or mixed-use development project ~~with a minimum density of 30 residential units per acre and~~ that provides ~~No more than one parking space per residential unit, and~~*
- ~~*Visitor parking that does not exceed 10% of the total number of residential parking spaces; or*~~

no more than the following parking spaces, per the TOD Housing Program Guidelines for Proposition 1C (Housing and Emergency Shelter Trust Fund Act of 2006):

Maximum Parking Spaces		
Project Location Designation	*Bedrooms per Unit*	*Maximum resident and guest parking spaces per unit*
Large city Downtown	*0-1*	*1.0*
	2+	*1.5*
Urban Center	*0-1*	*1.25*
	2+	*1.75*
All other areas	*0-1*	*1.5*
	2+	*2.0*

~~(ii)~~ A commercial development project with a minimum floor area ratio (FAR) of ~~three~~ one. ~~and that provides:~~

- ~~*For restaurants, no more than 3 parking spaces per 1000 square feet.*~~
- ~~*For offices, no more than 1.25 parking spaces per 1000 square feet.*~~
- ~~*For retail, no more than 2.0 parking spaces for 1000 square feet.*~~

~~*Sharing of parking between uses within these maximums is allowed. Carshare, bicycle, and blue zone parking spaces are not subject to these maximums."*~~

Reasons for Changes: The Program requests the low income housing definition coincide with the California Redevelopment Law requirement of 15%, as stated under California Government Code Section 33413(b)(2)(i), which is also consistent with Contra Costa County's 15% Inclusionary Housing Ordinance requirement.

Setting minimum service levels for bus hubs and bus transit stations is problematic; schedules are subject to change during the project approval process (and due to budget cuts), and are not governed by the Permittees.

The minimum Floor Area Ratio (FAR) of 3 would exclude many projects that can legitimately be categorized as TODs; this would constitute a disincentive that would make it likely that fewer of these projects would be developed.

Higher density development has a direct stormwater benefit in that substantially less impervious area is created per housing unit. It does not follow that limiting parking necessarily reduces the amount of impervious surface creating a further benefit. Creating an incentive for high density TODs is good policy as it relates to water quality protection. Tying the incentive to an unreasonable low parking requirement for semi-urban regions effectively eliminates the incentive and obviates an otherwise good policy.

Section C.3.e.i.(2). Make an addition to this provision as shown in the following redline/strikeout:

"All other Regulated Infill Projects, ~~or~~ Redevelopment Projects, and Road Improvement Projects may provide alternative compliance by satisfying one or more of the following requirements after minimizing the new and/or replaced impervious surface onsite:"

Reason for Changes: These changes to Provision C.3.e. would allow municipalities to implement cost-effective programs to reduce impervious area and add stormwater treatment on a watershed-wide or municipality-wide basis. The addition of turning lanes, safety improvements, and other road improvement projects are often highly constrained for space by adjacent developed properties, topography, and surface and subsurface utilities (e.g., water, sewer, gas, electrical, etc...). Further, the need to match existing grades typically makes it infeasible to control the direction of drainage or the amount of tributary area draining to a particular facility. This makes it infeasible to implement LID or stormwater treatment on many of these projects. On the other hand, municipalities could examine their capital improvement programs as a whole for opportunities to provide Equivalent Offsite Treatment by replacing existing impervious surfaces with landscaping or by providing stormwater treatment for existing roads, parking lots, and other facilities in connection with traffic calming and resurfacing projects.

Provision C.3.g. Hydromodification Management

As noted above, the Program requests Provision C.3.g be changed so that it is consistent with Board Order R2-2006-0050 (Attachment C to the Tentative Order).

Provision C.3.h. Operation and Maintenance of Stormwater Treatment Systems

Specify dates, which are not currently specified, for full implementation of the specified O&M Verification Program (Provision C.3.h.ii.) and for initial reporting (Provision C.3.h.iv.). The full implementation date should be no earlier than July 1, 2010, with reporting to commence no earlier than the September 15, 2011 Annual Report.

Reason for Change: Contra Costa municipalities are implementing operation and maintenance verification programs per the requirements of Order R2-2003-0022, which added the C.3 requirements. In Order R2-2003-0022, the reporting requirements for the verification program requires "a description of the Discharger's O&M Program; an evaluation of that O&M Program's effectiveness; summary of any planned improvements to the O&M Program; and a list or summary of treatment measures that have been inspected that year with inspection results."

In the Revised Tentative Order, Provision C.3.h.iii. requires the municipalities to maintain "a database or equivalent tabular format of all Regulated Projects." Although the municipalities maintain suitable records of treatment measures installed and inspected, some smaller municipalities have only a few treatment measures installed so far and have not yet had need to set up the kind of electronic database that may be needed to provide information "to the Water Board electronically in tabular form" as required by Provision C.3.h.iv. The addition of these dates, where dates are not currently specified, is requested so that the municipalities are given a compliance timeline that they can achieve.

C.5. Illicit Discharge Detection and Elimination

1. Section C.5.c.i. – Add "*during normal business hours*" at the end of the second sentence as follows:

"*If 911 is selected, also maintain and publicize a staffed, non-emergency phone number*

with voicemail, which is checked daily during normal business hours."

Reason for Addition: Municipal staff will not be available to respond to non-emergency stormwater complaints during non-business hours.

C.6 Construction Site Control

1. Section C.6.e.ii.(4)(d) – Change to "*Inches of rain since the last inspection (if the previous inspection resulted in a violation requiring timely corrective action)*".

Reason for Change: The Program understands this information may be relevant for tracking whether a previous violation and required corrective action has been conducted in a timely manner (i.e., "before the next rain event but no longer than 10 business days after the violations are discovered"). However, requiring construction site inspectors to determine and document this information for each and every inspection is burdensome and would not provide useful information. Municipal construction-site inspectors perform thousands of inspections over the course of a single rainy season. Some sites are visited daily. To maximize our limited inspection staff, we strive to keep the reporting and tracking requirements to the absolute minimum. Absent any justification for tracking this information for each and every inspection, we respectively request this specific item be changed as suggested above.

C.8 Water Quality Monitoring

1. Section C.8.b. – The management questions posed in this section are not consistent with the monitoring questions laid out by the Regional Monitoring Program (RMP). The management questions posed in the MRP should be the same as those laid out in the RMP. The RMP management questions were arrived at by mutual consensus of all stakeholders and as such represent the current best thinking on the subject and should be respected in regards to how they guide the MRP. The Program requests the management questions be changed to match those from the RMP.

2. Section C.8.d. – The requirement to conduct long-term monitoring is confusing and appears to be an amalgamation of disparate monitoring requirements that have significant overlap and redundancies with other monitoring requirements. The Program requests that this section be deleted from the MRP.

3. Section C.8.d.iii. – Immediately following Table 8.4, the following sentence has been added to the T.O., "** The SWAMP plan is to collect sediment toxicity and sediment chemistry samples annually at these stations during the month of June."* Does this mean that if SWAMP collects these data, stormwater programs are not required to?

In the Regional Board's "Comments and Responses Summary", they appear to answer this question in the affirmative as seen on page 19, response to Provision C.8.c.i, where it states:

"We have discussed Long-Term Monitoring locations with Permittees, and it is our understanding that the updated list of waterbodies to sample is acceptable. In addition, we suggest sample locations that are near the bottom of the waterbody and that are also sampled by the SWAMP. ***If they choose to use these selected locations, Permittees may use SWAMP data to fulfill Permit requirements"***.

The Program requests that this same sentence be added to the permit to clarify this point.

4. Section C.8.f. – The methodology called for in Pollutant of Concern monitoring is inconsistent with the methodologies employed in the RMP's Small Tributaries Loading Strategy. There is no scientific basis for the Regional Board to specify a different methodology in the MRP than in the RMP. The Program requests this monitoring be re-designed to be consistent with the RMP, or that the monitoring is removed from the MRP entirely so it can be conducted by the RMP.

5. Section C.8.g. - To promote use of volunteers, consideration needs to be given to the complexity of monitoring required, and with the recognition that use of volunteers to fulfill permit requirements represents a potential liability for Permittees.

If the Regional Board wishes to see citizen volunteers involved in sample collection tasks, safe harbor language would be necessary under those provisions, so that the learning curve of training volunteers and any errors or omissions in data collection does not become a liability for compliance.

An example of safe harbor language to enable volunteer monitors is:

"If volunteers participate in sample collection, compliance with this provision will be

considered on development and execution of an approved sampling and analysis workplan."

6. Section C.8.h.ii. and C.8.h.iii. – Changes to the Revised Tentative Order have made the reporting deadlines more onerous, not less so. Status and Trends Electronic Reporting was moved backwards from Nov. 30 to Sept. 30, allowing 60 *fewer* days than before. The Urban Creeks Monitoring Report deadline was moved from Nov. 30th to Dec. 15th, a positive change, but allowing only two additional weeks to produce the report. The net effect of the two changes is to give us 45 fewer days to produce reports than before.

Regardless of the total number of days to produce reports, the deadlines as given are unrealistic. In the case of BMI sampling, we do not even receive results until fall for sampling that occurs in the spring, so allowing even minimal time for data QA and uploading to electronic databases, we would not be able to meet the Sept. 30th deadline for electronic reporting. Given the fact that annual reports are due in the fall as well, it would not be possible to submit the Urban Creeks Monitoring Report by Dec. 15th.

We request that the deadline for Status and Trends Electronic Reporting be changed to Dec. 15th and the deadline for Urban Creeks Monitoring Report be changed to March 15th.

7. Section C.8.c., Table 8.1 –

A. **Algae and Nutrient Sampling –** Algae cover monitoring is a new addition to the Tentativer Order that is based on methods that are still under development by SWAMP, and nutrient criteria guidance that has not been formally adopted. A focused study to refine and standardize algae and nutrient data collection and interpretation is a more logical step towards evaluation of urban creeks for nutrient impairment. The Program requests that the requirements for nutrient and algae sampling be removed from the permit and replaced by the design of a nutrient characterization study to be conducted in the next permit term.

   If nutrient sampling is not removed, the Program requests clarification of the inconsistencies between the "*minimum sampling occurrence*" and "*minimum # of sample sites to monitor per year*". Depending on how you try to interpret the inconsistencies, the changes could result in a higher or lower level of effort than the previous Tentative Order. Table 8.1 currently says "*3/year in conjunction with algae sampling and water column toxicity sampling*". This implies the sampling is to occur

in spring season, dry season and during storm events. However, the references to storm, spring and dry were stricken and replaced with "*20/10/4*" not specifying any season. If these sites are to be sampled 3 times per year, this has increased, not decreased the level of effort. The Program believes Regional Board staff intended to reduce the sampling to once per year at 20/10/4 sites, but is not clear what season that should occur.

B. **Toxicity and Pollutants in Bedded Sediments** - Change minimum number of sample sites back to the December 14, 2007 Tentative Order values (i.e., from 5 sites back to 4 sites).

C. **Toxicity and Diazinon and Chlorpyrifos -** Move sampling of storm events to C.8.f "Pollutants of Concern Monitoring" since there is other storm event monitoring in that section of the permit.

D. **Pathogen Indicators -** Delete this parameter. In a June 10, 2008 meeting between Water Board staff and stormwater programs, Water Board staff had agreed to delete this parameter.

C.10. Trash Reduction

1. Section C.10.a.ii., Trash Hot Spot Selection. Change last sentence in second paragraph to read:

"If ~~no communication~~ neither Executive Officer approval nor a list of requested alternative hot spot locations is received by the Permittees 60 days after the ~~close of that comment period~~ submission of their Hot Spot Report, the hot spot selections are approved."

Reason for Change: Water Board staff's proposed language requires a minimum of 30 days public review of the submitted Hot Spot Report on the Water Board's web page, and a maximum of 60 days following the close of the public review period for the Water Board Executive Officer to affirmatively approve the Hot Spot Report, or to request alternative hot spots. While it would seem this language specifies up to three months (i.e., 90 days) for either Executive Officer approval of the Hot Spot Report or a request for alternative sites, there is no timeframe for initiating the 30 day public review period. This is unacceptable, and the 60 day period for Executive Officer action seems unnecessarily long. The change requested above provides 30 days for public review of

the Hot Spot Reports, and 30 days for Executive Officer action, while providing a time certain for municipal receipt of a response to their Hot Spot Report submittal.

2. Section C.10.a.iv., Trash Hot Spot Clean Up to Trash Action Level. Change this section as follows:

"*iv.* ~~***Trash Hot Spot Clean Up to***~~ ***Trash*** ~~***Action Level***~~ ***Hot Spot Goal*** *-* ~~*Permittees shall achieve TAL by July 1, 2012, at these trash hot spots, and then maintain at least that level.*~~ *The trash hot spot goal (THSG)* ~~*TAL implemented*~~ *for this permit cycle, which does not represent full attainment of the Basin Plan trash prohibition or water quality objectives for trash, will be 100 pieces of trash or less per 100 foot assessment reach* ~~*the "Urban Optimal" level of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) version of the Water Board developed Rapid Trash Assessment method (Urban RTA) Attachment 10.1. The Urban Optimal level of the Urban RTA includes the requirements of less than 100 pieces of trash per 100 foot assessment reach, and that there be no visual impact from trash within the assessment reach.*~~

Reason for Change: A trash action level (TAL) should be consistent with the concept of action levels developed by the Blue Ribbon Panel of experts assembled by the State Water Resources Control Board. As defined by the Blue Ribbon Panel, an Action Level or TAL should be a numerical goal that defines a threshold for the potential need for further management actions, and is not a water quality objective or numeric effluent limit. We request that the Tentative Order clarify that the TAL is a goal, and not a water quality objective or numeric effluent limit. We also request the TAL goal be set at 100 pieces of trash or less per 100 feet of creek/shoreline, instead of the Santa Clara URTA "urban optimal" category. Having a specific number of trash items established as the TAL goal is more consistent with the goal statement provided in C.10.a.(i) and allows less subjectivity than the Urban Rapid Trash Assessment Protocol.

3. Section C.10.a.v., Trash Capture Requirement. Change this section as follows:

"Previously Installed Capture Device Credit – Credit can be claimed for trash full capture devices meeting the full capture definition and installed and maintained by the Permittees ~~*before January 1, 2003*~~ *prior to the adoption of this Order."*

Reason for Change: The Program sees no rationale for limiting credit or excluding any previously installed "full capture trash devices" that meet the definition and intent of this provision. Whether a "full capture trash device" was installed before or after January 1,

2003 is completely arbitrary and irrelevant. Such installations should be credited regardless of when they were installed.

4. Section C.10.a.vii., Booms or sea curtains. Change 10% back to 25% as follows:

"Booms or sea curtains receive credit for ~~10%~~ 25% of the tributary catchment area.

Reason for Change: The December 14, 2007 Tentative Order allowed booms and sea curtains to receive credit for 25% of the area draining to the booms/curtain. It is unclear why the percentage credit was reduced, therefore we request the above change be made, which is consistent with Water Board staff's previous proposed language.

5. Section C.10.b.i., Trash Hot Spot Assessment. Change this section as follows:

Permittees shall assess trash at their designated trash hot spots relative to the Trash Hot Spot Goal (THSG) ~~using the SCVURPPP Urban Rapid Trash Assessment (Urban RTA) (Attachment I). These assessments shall occur twice~~ at least once a year for each approved Trash Hot Spot~~, at the beginning and end of~~ during the dry season~~, in the spring and fall of each year, with the first assessments occurring as a part of the Hot Spot selection process, in late summer 2009, after permit adoption. If a trash assessment scores less than 10 pieces of trash per 100 feet, two years in a row, assessment can be reduced to once a year.~~ Assessments may be limited to Urban RTA Parameter 1 (Level of Trash) and Parameter 2 (Actual Numb of Trash Items Found) except that at least one assessment during year two (2010) and at least one assessment during year five (1013) must include all six Urban RTA Parameters. The assessments shall be augmented by photo documentation as described in C.10.a.ii., which shall be reported with the assessments in the annual report.

Reasons for Changes: In Fiscal Year 2008/2009, Contra Costa County Volunteer Monitors conducted several trash assessments using both the SCVURPPP's Urban Rapid Trash Assessment and the San Francisco Bay Regional Water Quality Control Board's Rapid Trash Assessment Protocols. These assessments are labor and time intensive. The most time consuming aspect of both assessments involved tallying the collected trash items into the various trash categories. This fact, combined with the fact that the TAL goal is based upon the number of trash items per 100 feet of creek/shoreline, we request the assessment method require quantification of trash items at hot spots and not the URTA. Additionally, we request the assessment of each hot spot be conducted once a year during the dry season. However, we propose that the URTA be conducted once during

year two (2010) and once during year five (2013). The purpose for conducting the URTA in year two is to establish a baseline, which would be based upon a one year accumulation of trash at each trash hot spot (i.e., the time between the initial assessment and clean-up conducted in late summer 2009 and the year-two URTA conducted after May 1, 2010). Information obtained in the year-two URTA (i.e., trash types, sources, and pathways) would be used to develop trash source reduction strategies in accordance with C.10.a.viii, and to refine other measures designed to meet the TAL goal. Results obtained in the year five URTA can be compared to the year two URTA, and as a method to evaluate the effectiveness of any implemented trash source reduction measures and other trash reduction measures. The proposed changes outlined above would reduce overall compliance costs while still providing meaningful trash monitoring information.

6. Section C.10.c., Long-Term Plan for Trash Impact Abatement. Change this section as follows:

"*The Permittees, acting individually or collectively, shall create a long-term trash management plan to ~~prevent~~ further reduce trash impacts on beneficial uses within their jurisdictions to the maximum extent practicable with the long term goal of supporting ~~no impacts on~~ beneficial uses ~~from trash~~ by ~~2024~~ 2029. This plan ~~for achieving this 15-year, no-trash-impact goal will~~ shall be submitted with the ~~2013~~ 2014 Annual Reports.*"

Reason for Changes: Trash on our streets, in our neighborhoods, and in our water bodies is a societal problem. Simply understanding trash sources, pathways, and effective control measures will not be sufficient to end littering, illegal dumping, and homeless encampments, or otherwise eliminate trash impacts. Further significant trash reduction efforts will require a multitude of sustained and costly actions by local governments; institutional or legislative changes in the way products are made, packaged, sold, used and disposed of; and, significant changes in peoples behaviors. The changes outlined above are necessary and reflect reality while committing local governments to significantly reducing trash in water bodies. A twenty year timeframe is commensurate with the significant public investment that will be required for retrofitting and/or replacing significant portions of our aging drainage infrastructure with full trash capture devices.

7. Section C.10.d.iv., Reporting. Change the first paragraph in this section as follows:

"Permittees shall report the results of assessments of Trash Hot Spots, including photos,

and compare assessment results with the ~~TAL~~ Trash Hot Spot Goal (THSG). Report whether the ~~TAL~~ THSG has been achieved at the trash hot spots. If ~~TAL~~ THSG has not been achieved, the Permittee shall either report on additional actions aimed at further reducing trash at each Trash Hot Spot no meeting the THSG or present justification for redirecting resources to other locations ~~to achieve this goal~~."

Reason for Changes: For some trash hot spots, particularly those impacted by larger and more urban watersheds, meeting the trash hot spot goal of 100 pieces of trash or less within a 100 foot reach of stream or shoreline may prove difficult to achieve. Moreover, it is conceivable that a municipality's trash reduction actions could result in significant and measurable reductions in trash loading or accumulation at selected hot spots while still not attaining the trash hot spot goal. In this scenario, a municipality would be required to expend an inordinate amount of public resources trying to meet an arbitrary trash reduction goal on a single trash hot spot. Consistent with the "knee of the curve" concept and the "law of diminishing returns", which has been applied in other aspects of the proposed permit (e.g., the C.3.d. treatment BMP sizing criteria), a municipality should be allowed the flexibility and option to present justification for redirecting resources to another trash hot spot(s) where greater benefit or trash load reduction could be achieved. To provide this flexibility, we request the above change.

C.11. Mercury Controls

1. Section C.11. – Nearly all the provisions of C.11 and C.12 are identical, with the exception of a few but problematic inconsistencies. It would improve the permit greatly if Sections C.11 and C.12 were combined into one provision to eliminate duplication and remove inconsistencies.

2. Section C.11.c. – Delete "*Including Private Property*" from the title of this provision. In Section C.12.c, private property is rightly deleted. This is just one example of the inconsistencies between the two provisions that we do not think were intentional, but that will nevertheless cause difficulties in interpreting and carrying out the provisions.

3. Section C.11.c.i. – Reduce the number of pilot project locations from five (5) to four (4). Since there are four major stormwater programs included in the MRP, it makes sense geographically and from a cost-sharing perspective to have one pilot project per county. Adding one more location is arbitrary, unlikely to generate significant additional information and adds unnecessary complication to the already challenging task of

carrying out these pilot projects.

4. Section C.11.c.ii., Implementation Level – Last sentence says "*Permitees are responsible for contaminants located on public rights-of-way and the stormwater conveyance system*". The Program requests this sentence be deleted as it implies stormwater programs are responsible for any and all contamination in the public right of way and stormwater conveyance systems, which is incorrect and exposes us to unreasonable liability.

5. Section C.11.d.i. - Reduce the number of pilot project locations from five (5) to four (4). Since there are four major stormwater programs included in the MRP, it makes sense geographically and from a cost-sharing perspective to have one pilot project per county. Adding one more location is arbitrary, unlikely to generate significant additional information and adds unnecessary complication to the already challenging task of carrying out these pilot projects.

6. Section C.11.d.i. – Most of the text in this sub-provision does not match that in provision, C.12.d.i. This is another example of the inconsistencies between the two provisions that could be remedied by simply combining the two provisions into one.

7. Section C.11.d.iii. – Reporting deadlines given in this section do not match those contained in provision, C.12.d.iii. This is another example of the inconsistencies between the two provisions that could be remedied by simply combining the two provisions into one.

8. Section C.11.e. – Delete this provision. As written, it is not even possible for us to develop credible cost estimates to carry out these studies, especially at 10 locations. If Water Board staff intends for this provision to be carried out with funds in part derived from Prop 84, a statement to that effect should be added. It would be more feasible to carry out these provisions if they were explicitly linked to Prop 84 funding, to accurately convey Water Board staff's stated intentions and provide a reasonable explanation to the public for any delays in implementation should Prop 84 funding not be available to the pilot projects, or delayed because of the state's current fiscal situation.

9. Section C.11.f. - Delete this provision. As written, it is not even possible for us to develop credible cost estimates to carry out these studies. If Water Board staff intends for this provision to be carried out with funds in part derived from Prop 84, a statement to that effect should be added. It would be more feasible to carry out these provisions if

they were explicitly linked to Prop 84 funding, to accurately convey Water Board staff's stated intentions and provide a reasonable explanation to the public for any delays in implementation should Prop 84 funding not be available to the pilot projects, or delayed because of the state's current fiscal situation.

10. Section C.11.h. – Fate and transport studies of mercury in urban runoff are more rightly assigned as tasks under the RMP, not as a special study in an NPDES permit. This provision inappropriately delegates the Regional Board's duties to develop TMDL information. The Program requests the Water Board state that this requirement may be fulfilled by an RMP special study, and commit to supporting the special studies at the RMP technical committee and steering committee.

12. PCB Controls

1. Section C.12. – Nearly all the provisions of C.11 and C.12 are identical, with a few but problematic inconsistencies. It would improve the permit greatly if Sections C.11 and C.12 were combined into one provision to eliminate duplication and remove inconsistencies.

2. Section C.12.b.iii. – Dates have not been pushed forward one year to reflect the year that's passed since the December 14, 2007 Tentative Order was released. Revise dates to be one year later.

3. Section C.12.c.i. – Same comment as C.11.c.i.

4. Section C.12.c.ii.(1) Implementation Level – Same comment as C.11.c.ii.

5. Section C.12.d.i. – Same comment as C.11.d.i.

6. Section C.12.e. – Same comment as C.11.e.

7. Section C.12.f. – Same comment as C.11.f.

8. Section C.12.h. – Same comment as C.11.h.

C.13. Copper Controls

1. Section C.13.e.i. – Performing studies to reduce uncertainties related to impacts from copper are a legitimate subject of study. However, we believe it is not appropriate to conduct such a study as part of an NPDES permit, but rather belongs under the RMP, as a special study. The Program requests Regional Board staff state that this requirement may be fulfilled by an RMP special study, and commit to supporting the special studies at the RMP technical committee and steering committee.

C.14. Polybrominated Diphenyl Ethers (PBDE), Legacy Pesticides and Selenium

1. Section C.14.a. - This type of investigation into emerging pollutants is a legitimate subject for study. However, we believe it is not appropriate to conduct such a study as part of an NPDES permit bur rather belongs under the RMP, as a special study. The Program requests Regional Board staff simply state that this requirement may be fulfilled by an RMP special study, and commit to supporting the special studies at the RMP technical committee and steering committee.

2. C.14.a.ii. Implementation Level – The permit reads "*Characterize the representative distribution of PBDEs, legacy pesticides, and selenium in the urban areas of the* ***entire Bay Region*** *to determine:"* Does the Water Board really intend to have Stormwater Programs conduct investigations in Bay Area counties that are not even included in the MRP? The Program requests that the language be changed to restrict it to only those counties and areas covered in the MRP.

C.15 Exempted and Conditionally Exempted Discharges

1. Section C.15.b. – The Contra Costa Clean Water Program's February 29, 2008 written comments on the December 14, 2007 Draft Tentative Order for the Municipal Regional Permit included extensive comments on this section (i.e., C.15). In those comments, the Program included a request for a meeting with Water Board staff and other stakeholders to review and discuss a proper regulatory framework for addressing many of the listed conditionally exempted discharges. Water Board staff's "Comments and Responses Summary" released on March 18, 2009 specifically acknowledges this

request. Water Board staff's stated "Response" to this comment is as follows:

> *"Water Board staff met with water utilities in February 2008 during the period for public comment."*

Water Board staff's stated "Proposed MRP Revision" following the above "Response" is as follows:

> *"Substantial changes have been incorporated into the T.O. as a result of the February 2008 meeting."*

Water Board staff's response fails to adequately respond to our previous request and fails to follow-through with the direction given to them from Water Board members at the March 11, 2008 public hearing. At that hearing, Water Board members directed its staff to "work with the cities", "consult with municipalities", "try to ease that frustration in whatever way we can", "come up with a more balanced approach", etc... Water Board staff has neither consulted nor sought input from municipalities on any aspect of Provision C.15 since the closing of the February/March 2008 public comment period. The February 11, 2009 Revised Tentative Order is the first time municipalities have had a chance to again review and provide input on this section of the proposed permit.

The Contra Costa Clean Water Program again requests a special meeting with Water Board staff and other stakeholders to discuss a proper regulatory framework for addressing many of the conditionally exempted discharges listed in C.15.b. Of particular concern is C.15.b.i. ("Pumped Groundwater, Foundation Drains, Water from Crawl Space Pumps and Footing Drains"), and C.15.b. iii, ("Planned, Unplanned, and Emergency Discharges of the Potable Water System"). These provisions as currently drafted are unacceptable and bad public policy.